

Proposed Rule: Procurement in the Child Nutrition Programs

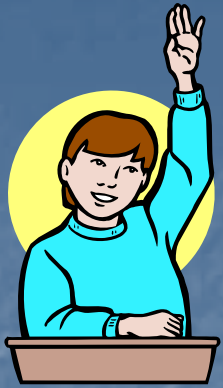
Lynn Rodgers and Melissa Rothstein
FNS, Child Nutrition Division
ACDA Conference
April 9, 2006



What we will discuss

- Proposed regulation
- Comments received
- Current status of final regulation
- Training and implementation plans





Why did FNS issue the proposed rule?

- ✓ IG audits find problems in SFA procurements of FSMCs in the 1990s
 - FNS issues guidance
- ✓ IG's audits in early 2000s find same type of procurement deficiencies
 - FNS guidance is not being used effectively
- ✓ Procurement deficiencies occurring in other areas

What did FNS propose?

1. Rebates & discounts in cost reimbursable contracts

- Allowable nonprofit food service account costs must be net of rebates & discounts
- SFAs must notify potential contractors
- Contractors must identify rebates & discounts



What else did FNS propose?

2. Contractors must identify allowable & unallowable costs on billings to the SFA
 - Would permit SFA to identify amount of allowable costs it can pay from nonprofit food service account and amount it must pay from other sources
 - Would not prevent SFA from contracting for unallowable costs

Did FNS propose anything else?

3. SA review of FSMC contracts before the contracts are signed

- The scope of authority granted to State agencies includes the review of all other contracts prior to execution should the SA choose to do so.

Continued.....

4. Provisions of the proposed rule strengthen SA rights and consequences when corrective action does not occur
 - Specifically, SFAs will not be allowed to use nonprofit food service account funds to pay for unallowable contracts costs
 - Costs resulting from improperly procured contracts due to an SFA's failure to initiate corrective actions to procurement and contract documents as required by the State agency will be unallowable

Finally.....

5. Technical changes to SBP & SMP regulations to ensure consistency with NLSP regulations

Comments

16 comments received:

- No School Food Authorities
- School Nutrition Association
- 7 State Agencies
- 3 Food Service Management Companies
- Trade organizations and professionals



Supported goals of:

- Improving competition
- Limiting expenditures to allowable costs

Comments in general

- Strong support for improving ethics & integrity in SFA procurements
- Questions, clarifications and additional comments on technical aspects of proposal
- No comments on proposed changes to breakfast and milk regulations to achieve consistency

State agency comments

- Supported the strengthening of oversight authority
- Strongly encouraged FNS to provide training & guidance materials
- Concerned that procedures not duplicate practices already in place



FSMC comments

- More diverse
- Focused on technical aspects
- Went beyond scope of proposed rule

FSMC Comments Continued..

- Some misunderstanding that the provision requiring that allowable costs be net of all discounts, rebates and other applicable credits would apply to fixed price contracts
 - ✓ Fixed price contracts are not subject to this requirement as the bidding process requires that the fixed price proposed reflect all rebates, discounts, and other applicable credits.

FSMC Comments Continued...

- The provisions of the proposed rule apply to State agencies and school food authorities, not food service management companies.

FSMC Comments Continued...

- Some misunderstanding that the provision requiring that allowable costs be net of all discounts, rebates and other applicable credits would apply only to FSMCs
 - ✓ This provision applies to all cost reimbursable contracts and is not limited to cost reimbursable contracts with FSMCs

FSMC Comments Continued...

- FSMC community split on rebate & discount proposal
- Requested fixed price contract mandate

Other comments

- Industry and FSMCs concerned with confidentiality of business information
- Industry split on rebates & discount proposal
- SAs & SNA supported rebate & discount proposal

Questions on proposed rule

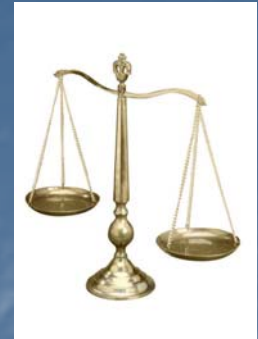
Q: Does the provision of the proposed rule requiring contract review prior to execution of the contract apply only to contracts with FSMCs?

A: The rule specifically proposed SA review of FSMC contracts before the contracts are signed, however, the scope of authority granted to State agencies includes the review of all other contracts prior to execution should the SA choose to do so.

Q: Can additional definitions be added to final rule (cost contract, fixed price contract, cost reimbursable contract)?

A: Some new definitions added

Ethics



- Added reference to Department regs (7 CFR Parts 3016 & 3019)
- Public and nonprofits must have written code of conduct

When will the final rule be published?



Still in clearance stage

No firm date

Goal: Summer 2006

Implementation

Timed

- Balance need to implement with workload of SAs and SFAs
- Consideration of newly signed contracts & contracts with substantial renewals remaining

Training & guidance materials

- Training after regulation is published
- Additional procurement guidance
 - Update FSMC guidance
 - New FNS instruction

FNS Instruction



- ✓ General procurement information
 - Will apply to all CN programs
- ✓ Not specific to FSMC or SFSP vendors
 - Guidance already issued
- ✓ Information on sealed bidding and competitive negotiation